

No. 13-1022 RV

1. On March 29, 2013, Waldeck purchased a 2010 Dodge motor vehicle for \$27,000.
2. On April 8, 2013, Waldeck sold a 2003 Cadillac motor vehicle for \$8,900.

3. On April 12, 2013, Waldeck applied for a Missouri title and vehicle registration for the 2010 Dodge. He received a credit against the purchase price in the amount of \$8,900 (the selling price of the 2003 Cadillac). Waldeck paid \$767.73 in state sales tax and \$651.60 in local tax on the final \$18,100 sale price (\$27,000 - \$8,900 = \$18,100).

4. On April 22, 2013, Waldeck sold a 2007 Harley Davidson motorcycle for \$9,600.

5. Between April 22, 2013 and April 26, 2013,¹ Waldeck filed a refund claim for a partial refund of the state and local sales tax he had paid on the purchase of the 2010 Dodge. On April 26, 2013, the Director denied the refund claim.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.² Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.³ Waldeck has the burden of proof.⁴ Tax credits and exemptions from taxation are construed strictly against the taxpayer, and any doubt or ambiguity is resolved against the taxpayer.⁵

Section 144.025.1 states:

Notwithstanding any other provisions of law to the contrary, in any retail sale other than retail sales governed by subsections 4 and 5 of this section, where any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only

¹ We do not have a copy of the refund request.

² Section 621.050.2. Statutory references, unless otherwise noted, are to the 2000 Revised Statutes of Missouri.

³ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

⁴ Section 621.050.2.

⁵ *Southwestern Bell Telephone Co. v. Director of Revenue*, 182 S.W.3d 226, 238 (Mo. 2005); *Hermann v. Director of Revenue*, 47 S.W.3d 362, 365 (Mo. 2001).

on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged. Where the purchaser of a motor vehicle, trailer, boat or outboard motor receives a rebate from the seller or manufacturer, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the amount of the rebate, if there is a bill of sale or other record showing the actual rebate given by the seller or manufacturer. Where the trade-in or exchange allowance plus any applicable rebate exceeds the purchase price of the purchased article there shall be no sales or use tax owed. *This section shall also apply to motor vehicles, trailers, boats, and outboard motors sold by the owner or holder of the properly assigned certificate of ownership if the seller purchases or contracts to purchase a subsequent motor vehicle, trailer, boat, or outboard motor within one hundred eighty days before or after the date of the sale of the original article* and a bill of sale showing the paid sale price is presented to the department of revenue at the time of licensing. A copy of the bill of sale shall be left with the licensing office. Where the subsequent motor vehicle, trailer, boat, or outboard motor is titled more than one hundred eighty days after the sale of the original motor vehicle, trailer, boat, or outboard motor, the allowance pursuant to this section shall be made if the person titling such article establishes that the purchase or contract to purchase was finalized prior to the expiration of the one hundred eighty-day period.

(Emphasis added.) Waldeck argues he should be allowed an additional credit on the sale price of the 2010 Dodge for the sale of the 2007 Harley Davidson. He focuses on the language, “This section shall also apply to motor vehicles” He argues that the plural form of “vehicles” means he should be allowed credit for multiple vehicles. But we see this as merely setting forth what is included in this statute. We determine the legislature’s intent from the language “within one hundred eighty days before or after the date of the sale of the original article” “Original” means “being the first instance or source[.]”⁶ “Article” means “an item of goods[.]”⁷

⁶ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 875 (11th ed. 2004).

⁷ *Id.* at 70.

The reference to “original article” indicates there can only be one. Accordingly, a single credit, based on the sale price of a single sold vehicle, may be taken against the purchase price of a single replacement motor vehicle. Waldeck already received a credit for the sale of the 2003 Cadillac against the purchase price of the 2010 Dodge. The statute does not authorize any additional credit.

Waldeck argues that he was given incorrect information at two of the Director’s licensing offices. The statute itself does not provide any exceptions, nor does it give the Director, his employees, or this Commission any discretion to make exceptions. Neither the Director nor this Commission has any power to change the law.⁸ Waldeck argues it is unfair to allow the Director to keep the money he paid. As an administrative agency, we have no authority to apply the doctrines of equity to make an exception to the law.⁹

Summary

Waldeck is not entitled to a refund of tax.

SO ORDERED on April 29, 2014.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner

⁸ *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

⁹ *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940).